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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/667,585

09/22/2003

Patrick Brant

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9633

23455 7590 06/14/2007  
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EXAMINER

RABAGO, ROBERTO

ART UNIT

PAPER NUMBER

1713

MAIL DATE

DELIVERY MODE

06/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/667,585

**Applicant(s)**

BRANT ET AL.

**Examiner**

Roberto Rábago

**Art Unit**

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 174-204, 208-254 and 258-273 is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☒ Claim(s) 22, 35-40, 73, 76, 87-92, 116 and 166-173 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/15/2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims pending in the application are 20,22,24,27-54,56,58-60,62,63,73,74,76,78,81-106,108,110-112,114-117,158-161 and 166-304.

Continuation of Disposition of Claims: Claims rejected are 20,24,27-34,41-54,56,58-60,62,63,74,78,81-86,93-106,108,110-112,114,115,117,158-161,205-207,255-257 and 274-304.

### **DETAILED ACTION**

1. Regarding duplicate numbering of claim 81, applicants' suggestion is accepted. Patent claims are required by 37 CFR 1.126 to be numbered consecutively, and therefore the duplicate numbering of claim 81 would ordinarily have prompted a required renumbering of all of the subsequent claims to ensure consecutive numbering. However, in view of the fact that the claims now number up to 304, and further in view of the fact that the second claim 81 has been cancelled and re-presented as new claim 274, a renumbering of claims 82-304 with all of the embedded dependencies would be an enormous burden on both applicants and the examiner, yet would effectively accomplish nothing. Henceforth in this application, any newly filed listing of claims should not include a second claim 81 indicated as cancelled, because such inclusion will be refused by the printer as improper, should this application proceed to issue. Any claim listing which continues to include a second claim numbered 81 may be returned as non-responsive or improper under 37 CFR 1.121.

### ***Drawings***

2. The amended drawing filed 12/15/2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows. The new drawing labeled Fig. 12 includes substantially more detail and data than that shown in

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the originally filed drawing. Furthermore, the new drawing includes the number "1000" not present in the original drawing, and not explained by applicants. In the event that applicants are of the opinion that the new drawing is simply the same drawing presented in a more legible version, it is noted that the original drawing was of such poor quality that most of the data points now shown as corresponding to the "42.2%" data points did not exist as marks on the sheet. The new insertion of these data points, as well as the unknown notation "1000," comprise prohibited new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

3. Claim 45-54, 97-105 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

(a) In claim 45, and claims 46-49 by dependency, the amendment that the reaction "further takes place in a tubular reactor" implies that the process include a loop reactor followed by a tubular reactor. However, the specification as filed does not provide support for this arrangement.

(b) In claim 50, and claims 51-54 by dependency, the amendment that the reaction "further takes place in an autoclave reactor" implies that the process include a

loop reactor followed by an autoclave reactor. However, the specification as filed does not provide support for this arrangement.

(c) In claim 97, 99-101 and claim 98 by dependency, the amendment that the reaction "further takes place in a tubular reactor" implies that the process include a loop reactor followed by a tubular reactor. However, the specification as filed does not provide support for this arrangement.

(b) In claims 102-105, the amendment that the reaction "further takes place in an autoclave reactor" implies that the process include a loop reactor followed by an autoclave reactor. However, the specification as filed does not provide support for this arrangement.

4. Claims 45-54, 60,62, 112, 114, 205-207, 255-257, 300 and 301 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are indefinite in that it cannot be determined whether the temperature and pressure conditions specified in the parent claims apply to the first, second, or all reactors. Applicant's arguments filed 8/28/2006 have been fully considered but they are not persuasive. The sections of the specification cited by applicants fail to provide support for the asserted meaning that "the pressures and temperatures recited in the base claims can be operated in any one or more of the

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reactors of a multiple reactor system.” The specification has been reviewed, but no disclosure of this scope can be found.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 275-304 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-47 of copending Application No. 11/433,889. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending claims 1, 39 and 41 would anticipate claims 275 and 304, while remaining copending claims 2-38 and 40-47 include all remaining limitations of instant claims 276-303.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 20, 24, 27-34, 41-49, 56, 58-60, 62, 63, 74, 78, 81-86, 93-101, 106, 108, 110-112, 114, 115, 117, 158-161, 274-276, 278, 280-287, 294-302 and 304 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-70 of copending Application No. 11/510,871.

Although the conflicting claims are not identical, they are not patentably distinct from each other because copending claims 1, 62, 64 and 66 would anticipate claims 20, 74, 275 and 304, while remaining copending claims 27-61, 63, 65 and 66-70 include all remaining limitations of instant claims 24, 27-34, 41-49, 56, 58-60, 62, 63, 78, 81-86, 93-101, 106, 108, 110-112, 114, 115, 117, 158-161, 274, 276, 278, 280-287 and 294-302.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 174-204, 208-254 and 258-273 are allowed. Claims 22, 35-40, 73, 76, 87-92, 116, and 166-173 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

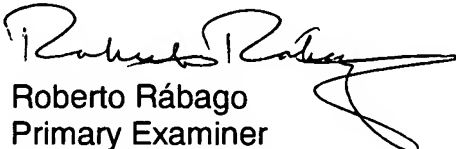


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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roberto Rábago whose telephone number is (571) 272-1109. The examiner can normally be reached on Monday - Friday from 8:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Roberto Rábago  
Primary Examiner  
Art Unit 1713

RR  
June 9, 2007